

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

YAAKOV KATZ,
individually and on behalf of a class,

Plaintiff,

-against-

CULVER NARROWS BEER
DISTRIBUTORS, INC., ANDRE
PANTALEO, Individually, and in his official
capacity.

12 CV 4914-DLI-VVP

**DEFENDANT CULVER NARROWS
BEER DISTRIBUTORS, INC.'S ANSWER
TO PLAINTIFF'S
FIRST AMENDED COMPLAINT**

Defendant, Culver Narrows Beer Distributors, Inc. ("Defendant"), by its attorneys Coughlin Duffy LLP, for answer to the First Amended Complaint filed on behalf of plaintiff, Yaakov Katz ("Plaintiff"):

1. Defendant denies knowledge or information sufficient to form a belief as to the truth of allegations of paragraph 1, and leaves the Plaintiff to his proofs.

2. To the extent the allegations of paragraph 2 comprise legal conclusions, no response is required. To the extent the allegations of paragraph 2 may be interpreted as factual allegations against this Defendant, denied. Defendant admits only that the quoted language appears in the referenced statute.

3. To the extent the allegations of paragraph 3 comprise legal conclusions, no response is required. To the extent the allegations of paragraph 3 may be interpreted as factual allegations against this Defendant, denied. Defendant admits only that the quoted language appears in the referenced statute.

4. To the extent the allegations of paragraph 4 comprise legal conclusions, no response is required. To the extent the allegations of paragraph 4 may be interpreted as factual

allegations against this Defendant, denied. Defendant admits only that the quoted language appears in the referenced statute.

5. To the extent the allegations of paragraph 5 comprise legal conclusions, no response is required. To the extent the allegations of paragraph 5 may be interpreted as factual allegations against this Defendant, denied. Defendant admits only that the quoted language appears in the referenced statute.

6. To the extent the allegations of paragraph 6 comprise legal conclusions, no response is required. To the extent the allegations of paragraph 6 may be interpreted as factual allegations against this Defendant, denied. Defendant admits only that the quoted language appears in the referenced statute.

7. To the extent the allegations of paragraph 7 comprise legal conclusions, no response is required. To the extent the allegations of paragraph 7 may be interpreted as factual allegations against this Defendant, denied. Defendant admits only that the quoted language appears in the referenced statute.

8. Denied.

9. To the extent the allegations of paragraph 9 comprise legal conclusions, no response is required. To the extent the allegations of paragraph 9 may be interpreted as factual allegations against this Defendant, denied. Defendant admits only that the quoted language appears in the referenced statute.

10. To the extent the allegations of paragraph 10 comprise legal conclusions, no response is required. To the extent the allegations of paragraph 10 may be interpreted as factual allegations against this Defendant, denied. Defendant admits only that the quoted language appears in the referenced statute.

JURISDICTION AND VENUE

11. To the extent the allegations of paragraph 11 comprise legal conclusions, no response is required.

12. To the extent the allegations of paragraph 12 comprise legal conclusions, no response is required.

PARTIES

13. Defendant denies knowledge or information sufficient to form a belief as to the truth of allegations of paragraph 13, and leaves the Plaintiff to his proofs.

14. Defendant denies knowledge or information sufficient to form a belief as to the truth of allegations of paragraph 14, and leaves the Plaintiff to his proofs.

15. Admitted.

16. This paragraph is not directed towards this Defendant and, as such, no response is required.

17. Defendant denies knowledge or information sufficient to form a belief as to the truth of allegations of paragraph 17, and leaves the Plaintiff to his proofs.

18. Insofar as the allegations contained in paragraph 18 are directed towards this Defendant, denied. Otherwise, Defendant denies knowledge or information sufficient to form a belief as to the truth of allegations of paragraph 18, and leaves the Plaintiff to his proofs.

FACTS

19. Defendant denies knowledge or information sufficient to form a belief as to the truth of allegations of paragraph 19, and leaves the Plaintiff to his proofs.

20. Defendant denies knowledge or information sufficient to form a belief as to the truth of allegations of paragraph 20, and leaves the Plaintiff to his proofs.

21. Defendant denies knowledge or information sufficient to form a belief as to the truth of allegations of paragraph 21, and leaves the Plaintiff to his proofs.

22. To the extent the allegations of paragraph 22 comprise legal conclusions, no response is required. Insofar as the allegations contained in paragraph 22 are directed towards this Defendant, denied.

23. To the extent the allegations of paragraph 23 comprise legal conclusions, no response is required. Insofar as the allegations contained in paragraph 23 are directed towards this Defendant, denied.

24. Admitted.

25. This paragraph is not directed towards this Defendant and, as such, no response is required.

26. To the extent the allegations of this paragraph are not directed towards this Defendant, no response is required. Insofar as the allegations contained in paragraph 26 are directed towards this Defendant, denied.

27. This paragraph is not directed towards this Defendant and, as such, no response is required.

CLASS ALLEGATIONS

28. Defendant denies knowledge or information sufficient to form a belief as to the truth of allegations of paragraph 28, and leaves the Plaintiff to his proofs.

29. Defendant denies knowledge or information sufficient to form a belief as to the truth of allegations of paragraph 29, and leaves the Plaintiff to his proofs.

30. Defendant denies knowledge or information sufficient to form a belief as to the truth of allegations of paragraph 30, and leaves the Plaintiff to his proofs.

31. Defendant denies knowledge or information sufficient to form a belief as to the truth of allegations of paragraph 31, and leaves the Plaintiff to his proofs.

32. Defendant denies knowledge or information sufficient to form a belief as to the truth of allegations of paragraph 32, and leaves the Plaintiff to his proofs.

33. Defendant denies knowledge or information sufficient to form a belief as to the truth of allegations of paragraph 33, and leaves the Plaintiff to his proofs.

34. Defendant denies knowledge or information sufficient to form a belief as to the truth of allegations of paragraph 34, and leaves the Plaintiff to his proofs.

35. Defendant denies knowledge or information sufficient to form a belief as to the truth of allegations of paragraph 35, and leaves the Plaintiff to his proofs.

VIOLATION ALLEGED

36. To the extent the allegations of paragraph 36 comprise legal conclusions, no response is required. To the extent the allegations of paragraph 36 may be interpreted as factual allegations against this Defendant, denied. Defendant admits only that the quoted language appears in the referenced statute.

37. To the extent the allegations of paragraph 37 comprise legal conclusions, no response is required. To the extent the allegations of paragraph 37 may be interpreted as factual allegations against this Defendant, denied.

38. To the extent the allegations of paragraph 38 comprise legal conclusions, no response is required. To the extent the allegations of paragraph 38 may be interpreted as factual allegations against this Defendant, denied.

39. Admitted.

40. Denied.

41. To the extent the allegations of paragraph 41 comprise legal conclusions, no response is required. To the extent the allegations of paragraph 41 may be interpreted as factual allegations against this Defendant, denied.

42. To the extent the allegations of paragraph 42 comprise legal conclusions, no response is required. To the extent the allegations of paragraph 42 may be interpreted as factual allegations against this Defendant, denied.

43. Defendant denies knowledge or information sufficient to form a belief as to the truth of allegations of paragraph 43, and leaves the Plaintiff to his proofs.

44. Defendant denies knowledge or information sufficient to form a belief as to the truth of allegations of paragraph 44, and leaves the Plaintiff to his proofs.

45. Defendant denies knowledge or information sufficient to form a belief as to the truth of allegations of paragraph 45, and leaves the Plaintiff to his proofs.

46. Defendant denies knowledge or information sufficient to form a belief as to the truth of allegations of paragraph 46, and leaves the Plaintiff to his proofs.

47. Defendant denies knowledge or information sufficient to form a belief as to the truth of allegations of paragraph 47, and leaves the Plaintiff to his proofs.

48. Defendant denies knowledge or information sufficient to form a belief as to the truth of allegations of paragraph 48, and leaves the Plaintiff to his proofs.

49. To the extent paragraph 49 contains allegations which are not directed against this Defendant, no response is required. To the extent the allegations of paragraph 49 comprise legal conclusions, no response is required. Defendant admits only that it accepts Visa cards in connection with its business.

50. Defendant denies knowledge or information sufficient to form a belief as to the truth of allegations of paragraph 50, and leaves the Plaintiff to his proofs.

51. Defendant denies knowledge or information sufficient to form a belief as to the truth of allegations of paragraph 51, and leaves the Plaintiff to his proofs.

52. Defendant denies knowledge or information sufficient to form a belief as to the truth of allegations of paragraph 52, and leaves the Plaintiff to his proofs.

53. Defendant denies knowledge or information sufficient to form a belief as to the truth of allegations of paragraph 53, and leaves the Plaintiff to his proofs.

54. Defendant denies knowledge or information sufficient to form a belief as to the truth of allegations of paragraph 54, and leaves the Plaintiff to his proofs.

55. Defendant denies knowledge or information sufficient to form a belief as to the truth of allegations of paragraph 55, and leaves the Plaintiff to his proofs.

56. Defendant denies knowledge or information sufficient to form a belief as to the truth of allegations of paragraph 56, and leaves the Plaintiff to his proofs.

57. Defendant denies knowledge or information sufficient to form a belief as to the truth of allegations of paragraph 57, and leaves the Plaintiff to his proofs.

58. Defendant denies knowledge or information sufficient to form a belief as to the truth of allegations of paragraph 58, and leaves the Plaintiff to his proofs.

59. Defendant denies knowledge or information sufficient to form a belief as to the truth of allegations of paragraph 59, and leaves the Plaintiff to his proofs.

60. Defendant denies knowledge or information sufficient to form a belief as to the truth of allegations of paragraph 60, and leaves the Plaintiff to his proofs.

61. Defendant denies knowledge or information sufficient to form a belief as to the truth of allegations of paragraph 61, and leaves the Plaintiff to his proofs.

62. Defendant denies knowledge or information sufficient to form a belief as to the truth of allegations of paragraph 62, and leaves the Plaintiff to his proofs.

63. Denied.

64. To the extent the allegations of paragraph 64 comprise legal conclusions, no response is required. To the extent the allegations of paragraph 64 may be interpreted as factual allegations against this Defendant, denied. Defendant admits only that the quoted language appears in the referenced statute.

65. Defendant denies that Plaintiff is entitled to damages of any kind as alleged in the Plaintiff's First Amended Complaint.

FIRST AFFIRMATIVE DEFENSE

Plaintiff's complaint fails to state a claim upon which relief can be granted and this defendant reserves the right to move at or before trial to dismiss same and/or to dismiss any portions of same.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's complaint is barred by the applicable statute of limitations and/or statute of repose.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's complaint is barred by the doctrine of mistake.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's complaint is barred by the doctrines of waiver, laches, and estoppel.

FIFTH AFFIRMATIVE DEFENSE

The injuries and damages complained of are the proximate result of the negligence, actions and/or omissions of third-parties, persons, or business entities over whom this Defendant had no control and for whose actions this Defendant cannot be held liable.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred or limited by the immunities and/or defenses afforded to this Defendant under The Fair and Accurate Credit Transaction Act of 2003 (FACTA).

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims must fail because: the purported class is not so numerous that joinder of all members is impracticable; (2) there are not questions of law or fact common to the class, (3) the claims or defenses of the representative parties are not typical of the claims or defenses of the class, and (4) the Plaintiff will not fairly and adequately protect the interests of the class.

EIGHTH AFFIRMATIVE DEFENSE

Defendant reserves the right to assert jurisdictional defenses should ongoing investigation demonstrate that such defenses are applicable to Plaintiff's claims.

NINTH AFFIRMATIVE DEFENSE

Plaintiff has failed to serve or join all necessary and indispensable parties to this action.

TENTH AFFIRMATIVE DEFENSE

This Defendant reserves the right to seek a credit reducing the amount of any judgment in favor of the plaintiff to reflect the degree of fault allocated to any co-defendant, regardless of any settlement by any defendant.

ELEVENTH AFFIRMATIVE DEFENSE

Any failure of this Defendant to comply with the truncation provisions of FACTA was not willful.

TWELFTH AFFIRMATIVE DEFENSE

This Defendant acted with a reasonable belief that it conducted itself in accordance with the FACTA requirements.

THIRTEENTH AFFIRMATIVE DEFENSE

This Defendant reserves the right to supplement these affirmative defenses up to and including the time of trial.

WHEREFORE, Defendant demands judgment dismissing the First Amended Complaint and awarding it costs and disbursements of this action and such other and further relief as the Court deems just and proper.

DEMAND FOR TRIAL BY JURY

PLEASE TAKE NOTICE that defendant, Culver, hereby demands a trial by jury on all issues so triable.

Dated: December 8, 2014

COUGHLIN DUFFY LLP

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